



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Ecology AO # 13-07

Permanent Rule Only

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: See Attachment A

Citation of existing rules affected by this order:

Repealed:

Amended: Chapter 173-303 WAC, Dangerous Waste Regulations

Suspended:

Statutory authority for adoption: Chapter 70.105 RCW

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-17-083 on August 18, 2014.

Describe any changes other than editing from proposed to adopted version:

See Attachment B.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted: 12/18/14

NAME (TYPE OR PRINT)

Maia D. Bellon

SIGNATURE

TITLE

Director, Department of Ecology

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 18, 2014

TIME: 3:02 PM

WSR 15-01-123

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	<u>1</u>	Amended	<u>21</u>	Repealed	<u>1</u>
Recently enacted state statutes:	New	_____	Amended	<u>6</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>40</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>1</u>	Amended	<u>38</u>	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Attachment A

The Department of Ecology had adopted amendments to Chapter 173-303 WAC Dangerous Waste Regulations. Updates are to be current with the federal hazardous waste program. Several federal hazardous waste rules are being adopted into the state Dangerous Waste Regulations, including a new rule simplifying waste management at university and college laboratories, changes to import/export rules, incorporating corrections to the United States Environmental Protection Agency (EPA) hazardous waste regulations, and a few other new, minor federal rules. See below for more details. The EPA Federal Register summaries of these rules (available in the Preamble and Summary of proposed rules) and the adopted rule language are available at: http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRuleMaking.html.

Federal hazardous waste rules adopted:

- 1) Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities. December 1, 2008 - 73 FR 72912.
- 2) Technical Corrections to the Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities. December 20, 2010 – 75 FR 79304.
- 3) Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes. January 8, 2010 – 75 FR 1236.
- 4) Hazardous Waste Technical Corrections and Clarifications Rule. March 18, 2010 – 75 FR 12989 and June 4, 2010 – 75 FR 31716.
- 5) Hazardous Waste Technical Corrections and Clarifications Rule. April 13, 2012 – 77 FR 22229.
- 6) Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Saccharin and Its Salts From the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances. December 17, 2010 – 75 FR 78918.
- 7) Hazardous Waste Manifest Printing Specifications Correction Rule. June 22, 2011 – 76 FR 36363.
- 8) Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes. June 13, 2011 – 76 FR 34147.

State-initiated amendments adopted:

Ecology is adopting other state-initiated amendments not related to the federal rules listed above. Significant changes are described below. The final adopted rule language is available on Ecology's website at: http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRuleMaking.html

WAC 173-303-073(2)(e)(v). A thirty day time limit is established for special waste held at solid waste transfer stations. This will reduce chances of pollution resulting from storage of special waste at transfer stations.

WAC 173-303 sections 200, 400, 64690, 650, 660, 665 and 806. Adds the requirement that facilities use an "independent qualified registered professional engineer" instead of a "qualified professional engineer" (or similar language) for regulatory certifications. These changes provide consistency throughout the regulations for the regulated community and promote quality assurance at treatment, storage and disposal facilities.

WAC 173-303 sections 400, 645, 800 and 806. Adopt rules allowing use of enforceable documents in lieu of RCRA post closure permits. This option provides an easier, more efficient regulatory process for facilities entering post closure while maintaining appropriate agency oversight.

WAC 173-303-620. Several areas of the financial assurance rule are being changed. The adopted rule includes a raise to the minimum tangible net worth requirement from \$20 million to \$25 million to qualify for use of the financial test or corporate guarantee option. We are also increasing the minimum financial assurance amounts for liability coverage. Both of these changes are made to keep pace with inflation.

WAC 173-303-64620(5). This change adds rules for financial assurance at corrective action sites. This rule will codify existing EPA guidance and current Ecology practice as it is used in Agreed Orders and Consent Decrees. No federal or state financial assurance rules previously existed for corrective action sites, and by creating these rules it will reduce negotiation time involved in establishing financial assurance.

WAC 173-303-905. This rule is being deleted because it is in conflict with the Public Records Act (Chapter 42.56 RCW) and is unnecessary.

Revisions to the Chemical Test Methods Guidance

Ecology also updated the Chemical Test Methods Guidance to clarify test methods for persistent dangerous waste.

Attachment B

Differences between Proposed and Final Rule

The following content describes the changes and Ecology's reasons for making them. Rule language changes from the proposed rule to the final adopted rule are shown by using ~~strikeout~~ and underline.

1. WAC 173-303-620(8)(a)(i) Financial Assurance Minimum Coverage

Explanation of change: The proposed financial assurance liability minimums are being lowered in response to input from insurance brokers. As part of the rule-making process, Ecology contacted numerous insurance brokers regarding the proposal to increase liability coverage minimums. Without exception, these industry experts commented that the minimum coverage amounts in Ecology's original proposal would be difficult for firms to comply with. These brokers informed Ecology that the insurance companies they represent typically do not write policies in increments less than \$1 million, and some insurance companies do not write policies for other unusual amounts (such as a \$3 million policy). Ecology does not want to unduly burden regulated facilities or limit their choices for insurance providers.

(8) Liability requirements.

(a) An owner or operator of a TSD facility, off-site recycling or used oil processing/re-refining facility, or a group of such facilities must demonstrate financial responsibility for bodily injury and property damages to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must meet the requirements of 40 C.F.R. 264.147(a), which is incorporated by reference, with the following additional requirements:

(i) The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least ~~two million five hundred thousand~~ two million dollars per occurrence with an annual aggregate of at least ~~five~~ four million dollars, exclusive of legal defense costs. For facilities that meet the criteria listed in 40 C.F.R. 264.147(b), the owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of ~~seven~~ five million dollars per occurrence with an annual aggregate of ~~fourteen~~ ten million dollars, exclusive of legal defense costs.

2. WAC 173-303-64620(5)(a) Financial Assurance for Corrective Action facilities

Explanation of change: A commenter pointed out that existing financial assurance rule language exempts states and the federal government from financial assurance requirements. They asked that the new financial assurance rules in section 64620 clarify this exemption. Ecology agrees that additional clarification about this issue would make it easier to understand. Ecology based the proposed rule on the existing closure and post-closure rules. This makes the various financial assurance rules as consistent as possible. It is important that any clarification be full, complete, and that it address other related situations. Under Washington's closure and post-closure rules, state and federal government entities are exempt from all aspects of the financial assurance regulations. However, operators of federal and state facilities are only exempt from the requirement to provide a financial assurance mechanism; they are required to provide cost estimates. Federal contractors are not exempt from any financial assurance requirement. These requirements may be superseded by permit conditions pursuant to WAC 173-303-610(1)(e). Ecology will add a new paragraph at the beginning of the proposed rule and renumber the remaining paragraphs accordingly.

(5) At a minimum, financial assurance for corrective actions as required in subsections (1) and (2) of this section must be consistent with the following requirements:

(a) States and the federal government are exempt from the requirements of this section. Operators of state or federally owned facilities are exempt from the requirements of this section, except subsections (c), (f), and (g) of this section. Operators of facilities who are under contract with (but not owned by) the state or federal government must meet all of the requirements of this section.